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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,707	08/20/2003	Klaus-Juergen Pees	ACY33350-02	5127
26474	7590	08/18/2006	EXAMINER	
NOVAK DRUCE DELUCA & QUIGG, LLP			KIFLE, BRUCK	
1300 EYE STREET NW			ART UNIT	
SUITE 400 EAST TOWER			PAPER NUMBER	
WASHINGTON, DC 20005			1624	

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/643,707		PEES ET AL.	
	Examiner		Art Unit	
	Bruck Kifle, Ph.D.		1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Oath/Declaration

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

Applicant has not complied with the requirements 37 CFR 1.175, which in turn incorporate the requirements of 37 CFR 1.63 because the declarations of record do not acknowledge the filing of a foreign application. A new reissue oath or declaration is required in the body of which the present application should be identified by application number and filing date and which states that foreign priority under 35 U.S.C. 119(a)-(d) to International Application No. PCT/US98/05615, filed March 23, 1998 is being claimed.

Applicants also need to correct the first line of the specification to reflect that foreign priority is being claimed under 35 U.S.C. 119(a)-(d), not only 119 which includes (e) as instantly stated. It is suggested to rewrite the first line of the specification, as

“This application is a reissue of 09/272,916, filed March 19, 1999, now U.S. Patent No. 6,255,309, issued July 3, 2001, which claims foreign priority under 35 U.S.C. 119(a)-(d) to International Application No. PCT/US98/05615, filed March 23, 1998.”


Several attempts to rectify this problem were made by telephone but Applicants have not responded. This application is now withdrawn from issue and under examination in the Technology Center. It is noted that this reissue application was filed to correct the sole error of claims to foreign priority, which has not been corrected.

Claims 1-6 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. The nature of the defect in the declaration is set forth in the discussion above in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruck Kifle, Ph.D. whose telephone number is 571-272-0668. The examiner can normally be reached Mondays to Fridays between 8:30 AM and 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bruck Kifle, Ph.D.
Primary Examiner
Art Unit 1624

BK
August 15, 2006